

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IPVENTURE, INC.,
Appellant

v.

FEDEX CORPORATION,
Appellee

2016-2139

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. 95/001,896.

Before MOORE, REYNA, and HUGHES, *Circuit Judges*.
MOORE, *Circuit Judge*.

O R D E R

IpVenture, Inc. and FedEx Corporation respond to this court's July 28, 2016 order. The court construes IpVenture's response as a motion to lift the stay of proceedings and set the briefing schedule or alternatively grant a limited remand for further proceedings.

This appeal stems from an *inter partes* reexamination of IpVenture's U.S. Patent No. 7,212,829. On September 29, 2015, the Patent Trial and Appeal Board issued a

decision affirming the examiner's rejection of claims 1–183 of the patent. On November 24, 2015, IpVenture filed with the Board a request for a rehearing of that decision. On April 1, 2016, the Board denied the rehearing request as untimely. On May 26, 2016, IpVenture filed a notice of appeal from the Board's September and April Decisions.

The United States Patent and Trademark Office notified this court that it would not file a certified list in this case, asserting IpVenture's appeal was untimely because its November 2015 request for rehearing was untimely filed, and therefore its appeal to this court was untimely under 37 C.F.R. § 1.304(a)(1) (2000). On July 28, 2016, this court granted IpVenture's request to stay proceedings for the Patent Office to consider its petition requesting, pursuant to 37 C.F.R. § 1.304(a)(3) (2000), an extension of time to file an appeal, and requesting the Patent Office to reconsider whether its rehearing request was timely filed. On August 19, 2016, the Patent Office denied IpVenture's extension request without prejudice, concluding that this pending appeal deprived the Patent Office of jurisdiction to consider the request.

We remand for the limited purpose of allowing the Patent Office to consider IpVenture's § 1.304(a)(3) request and, as necessary, the other arguments IpVenture raised in its petition before the Patent Office. We retain jurisdiction and hold in abeyance IpVenture's request to lift the stay. The parties should promptly inform this court of the Patent Office's ruling on IpVenture's petition and should propose how they believe this appeal should proceed in light of the Patent Office's decision.

Accordingly,

IT IS ORDERED THAT:

(1) The case is remanded for the limited purposes consistent with this order. This court retains jurisdiction over the appeal. The stay remains in place.

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(3) Within seven days from the date of the Patent Office's ruling on the petition, the parties are directed to inform this court how they believe this appeal should proceed.

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

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